

1 **DECISION AND ORDER OF THE**
2 **DIVISION OF MEDICAL QUALITY**
 MEDICAL BOARD OF CALIFORNIA

3 Physician's and Surgeon's Certificate No. A-24047,
4 heretofore issued to respondent Rurico Robert Espinoza, M.D., is
5 hereby revoked.

6 An effective date of October 15, 1998, has been
7 assigned to this Order.

8 Pursuant to Government Code section 11520, subdivision
9 (c), respondent may serve a written motion requesting that the
10 decision be vacated and stating the grounds relied on within
11 seven (7) days after service of the decision on respondent. The
12 agency in its discretion may vacate the decision and grant a
13 hearing on a showing of good cause, as defined in the statute.

14 Made this 15th day of September, 1998

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17 FOR THE DIVISION OF MEDICAL QUALITY
18 MEDICAL BOARD OF CALIFORNIA
19 **Robert del Junco, M.D.**
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7

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation)	Case No. 11-97-78167
Against:)	
12)	
13 RURICO ROBERT ESPINOZA, M.D.)	DEFAULT DECISION
9945 Springland Drive)	(Gov. Code, § 11520)
Whittier, California 90601)	
14)	
Physician's and Surgeon's)	
15 Certificate No. A-24047,)	
)	
16 Respondent.)	
)	

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19 The above-captioned matter came on regularly before the
20 Division of Medical Quality ("Division"), Medical Board of
21 California ("Board"), Department of Consumer Affairs, State of
22 California, for action as a default matter.
23

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FINDINGS OF FACT

25 The Division, having reviewed the pleadings, documents
26 of service, affidavits, admissions of the respondent, and other
27 evidence, finds that:

1 **Jurisdiction**

2 1. On December 2, 1970, the Board issued Physician's
3 and Surgeon's Certificate No. A-24047 to respondent. Said
4 certificate was automatically suspended, effective June 24, 1997,
5 pursuant to Business and Professions Code section 2236.1,
6 subdivision (a). Said certificate expired on June 30, 1997, and
7 has not been renewed. The Division retains jurisdiction to take
8 disciplinary action against respondent's certificate pursuant to
9 Business and Professions Code section 118.

10 2. On November 20, 1997, Complainant Ron Joseph, in
11 his official capacity as Executive Director of the Board, filed
12 before the Division an Accusation bearing Board Case No. 11-97-
13 78167 against Rurico Robert Espinoza, M.D. ("respondent").

14 3. At all times relevant hereto, respondent's address
15 of record on file with the Board was 9945 Springland Drive,
16 Whittier, California 90601. Section 1303 of Title 16 of the
17 California Code of Regulations requires licensees of the Board to
18 maintain at all times a current address of record with the Board.

19 4. In accordance with section 11505, subdivision (c),
20 of the Government Code, on November 20, 1997, Arlene Krysinski,
21 an employee of the Board, sent by certified mail a copy of the
22 Accusation on file in Board Case No. 11-97-78167, along with a
23 Statement to Respondent, Government Code sections 11507.5 et
24 seq., Notice of Defense forms, and other materials, to
25 respondent's address of record, and also to Centinela State
26 Prison, P.O. Box 731, Imperial, California 92251, where he is or
27 was believed to be incarcerated. On November 24, 1997, the green

1 certified mail return receipt accompanying the Centinela State
2 Prison mailing was signed "c/o M. Lopez," and returned to the
3 Board by the United States Postal Service. Copies of the
4 Accusation, relevant accompanying documents, the declaration of
5 service, and the green certified mail return receipt are attached
6 hereto, collectively, as "Exhibit 1," and are incorporated herein
7 by reference.

8 5. The documents sent to the Whittier address were
9 returned to the Medical Board marked "Unclaimed." Dates on the
10 envelope indicate that attempted delivery and/or notice of the
11 certified mailing occurred on November 24, 1997, December 1,
12 1997, and December 9, 1997. A copy of the envelope marked
13 "Unclaimed" is attached hereto as "Exhibit 2."

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15 **Default**

16 6. Government Code section 11506 provides, in
17 pertinent part, that:

18 "(c) The respondent shall be entitled to a hearing
19 on the merits if the respondent files a notice of
20 defense, and the notice shall be deemed a specific
21 denial of all parts of the accusation not expressly
22 admitted. Failure to file a notice of defense shall
23 constitute a waiver of respondent's right to a hearing,
24 but the agency in its discretion may nevertheless grant
25 a hearing. . . ."

26 7. Respondent failed to file timely, and to date has
27 not filed, a Notice of Defense in this matter. Respondent

1 therefore is in default and has waived his right to a hearing on
2 the merits of the Accusation on file in Board Case No. 11-97-
3 78167.

4 8. Government Code section 11520 states, in relevant
5 portion, that:

6 "(a) If the respondent either fails to file a
7 notice of defense or to appear at the hearing, the
8 agency may take action based upon the respondent's
9 express admissions or upon other evidence and
10 affidavits may be used as evidence without any notice
11 to respondent; . . ."

12 9. Pursuant to its authority under Government Code
13 section 11520, the Division will take action based upon
14 respondent's express admissions and other evidence, without
15 further hearing.

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17 **Allegations**

18 10. The factual allegations set forth in the
19 Accusation are matters of public record and are hereby officially
20 noticed by the Division of Medical Quality, in accordance with
21 Government Code section 11515.

22 11. The factual allegations, and each of them,
23 contained in the Accusation on file in Board Case No. 11-97-78167
24 are true.

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DETERMINATION OF ISSUES

1. Respondent was properly served with the Accusation on file herein and was given due notice of the charges in said Accusation. Respondent has failed to file a Notice of Defense.

2. The Division has jurisdiction over respondent and may proceed to adjudicate this matter by way of default.

3. By reason of the Findings of Fact set forth above, respondent's Physician's and Surgeon's Certificate is subject to disciplinary action due to his conviction of a substantially related crime, with attendant circumstances, which is unprofessional conduct under Business and Professions Code sections 2236, 2234, subdivision (e), and which is independent grounds for license discipline pursuant to Business and Professions Code section 490.

4. By reason of Determination of Issues No. 3, supra, the Division is authorized to revoke respondent's Physician's and Surgeon's Certificate, pursuant to sections 2220, 2227, 2234, 490 of the Business and Professions Code.

Wherefore, the Division of Medical Quality, Medical Board of California, makes the following decision and order:

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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov. 20 1997
BY Arlene Kuperachi **ANALYST**

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	MBC Case No. 11-97-78167
Against:)	
)	
RURICO ROBERT ESPINOZA, M.D.)	
9945 Springland Drive)	
Whittier, California 90601)	ACCUSATION
)	
Physician's and Surgeon's)	
Certificate No. A-24047,)	
)	
Respondent.)	

Ron Joseph ("Complainant"), as causes for disciplinary
action, alleges as follows:

PARTIES

1. Complainant is the Executive Director of the
Medical Board of California (hereinafter the "Board") and brings
this accusation solely in his official capacity.

2. On or about December 2, 1970, Physician's and
Surgeon's Certificate No. A-24047 was issued by the Board to
Rurico Robert Espinoza, M.D. (hereinafter "respondent"). At all

1 times relevant to the charges brought herein, respondent's
2 certificate was in full force and effect. On June 30, 1997,
3 respondent's certificate expired. The Board retains jurisdiction
4 to take disciplinary action against this certificate pursuant to
5 Business and Professions Code section 118.

6 7 **JURISDICTION AND LEGAL AUTHORITY**

8 3. This accusation is brought before the Division of
9 Medical Quality (hereinafter the "Division") of the Board, under
10 the authority of the following sections of the California
11 Business and Professions Code (hereinafter "B&PC").

12 4. B&PC section 2227 provides that the Division may
13 revoke, suspend for a period not to exceed one year, or place on
14 probation and order the payment of probation monitoring costs,
15 the license of any licensee who has been found guilty under the
16 Medical Practice Act.

17 5. B&PC section 2234 provides in relevant part that:

18 "The Division of Medical Quality shall take action
19 against any licensee who is charged with unprofessional con-
20 duct. In addition to other provisions of this article, un-
21 professional conduct includes, but is not limited to, the
22 following:

23 "(a) Violating or attempting to violate, directly or
24 indirectly, or assisting in or abetting the violation of, or
25 conspiring to violate, any provision of this chapter...

26 "(e) The commission of any act involving dishonesty or
27 corruption which is substantially related to the

1 qualifications, functions, or duties of a physician and
2 surgeon."

3 6. B&PC § 2236(a) provides in relevant portion that,
4 "The conviction of any offense substantially related to the
5 qualifications, functions, or duties of a physician and surgeon
6 constitutes unprofessional conduct within the meaning of this
7 chapter. The record of conviction shall be conclusive evidence
8 only of the fact that the conviction occurred..."

9 7. B&PC section 490 provides in relevant portion
10 that, "A board may suspend or revoke a license on the ground that
11 the licensee has been convicted of a crime, if the crime is
12 substantially related to the qualifications, functions, or duties
13 of the business or profession for which the license was
14 issued..."

15 8. B&PC section 2236.1, as relevant hereto, states
16 that:

17 "(a) A physician and surgeon's certificate shall be
18 suspended automatically during any time that the holder of
19 the certificate is incarcerated after conviction of a
20 felony, regardless of whether the conviction has been
21 appealed. The Division of Medical Quality shall,
22 immediately upon receipt of the certified copy of the record
23 of conviction, determine whether the certificate of the
24 physician and surgeon has been automatically suspended by
25 virtue of his or her incarceration, and if so, the duration
26 of that suspension. The Division shall notify the physician
27 and surgeon of the license suspension and of his or her

1 right to elect to have the issue of penalty heard as
2 provided in this section.

3 "(b) Upon receipt of the certified copy of the record
4 of conviction, if after a hearing it is determined therefrom
5 that the felony of which the licensee was convicted was
6 substantially related to the qualifications, functions, or
7 duties of a physician and surgeon, the Division of Medical
8 Quality shall suspend the license until the time for appeal
9 has elapsed, if no appeal has been taken, or until the
10 judgment of conviction has been affirmed on appeal or has
11 otherwise become final, and until further order of the
12 division. The issue of substantial relationship shall be
13 heard by an administrative law judge from the Medical
14 Quality Panel sitting alone or with a panel of the division,
15 in the discretion of the division. A conviction of any
16 crime referred to in Section 2237, or a conviction of
17 Section 187, 261, or 288 of the Penal Code, shall be
18 conclusively presumed to be substantially related to the
19 qualifications, functions, or duties of a physician and
20 surgeon. Upon its own motion or for good cause shown, the
21 division may decline to impose or may set aside the
22 suspension when it appears to be in the interest of justice
23 to do so, with due regard to maintaining the integrity of
24 and confidence in the medical profession.

25 "(c) (1) Discipline may be ordered in accordance with
26 Section 2227, or the Division of Licensing may order the
27 denial of the license when the time for appeal has elapsed,

1 the judgment of conviction has been affirmed on appeal, or
2 an order granting probation is made suspending the imposi-
3 tion of sentence, irrespective of a subsequent order under
4 Section 1203.4 of the Penal Code allowing the person to
5 withdraw his or her plea of guilty and to enter a plea of
6 not guilty, setting aside the verdict of guilty, or dismis-
7 sing the accusation, complaint, information, or indictment.

8 "[c] (2) The issue of penalty shall be heard by an
9 administrative law judge from the Medical Quality Panel
10 sitting alone or with a panel of the division, in the
11 discretion of the division. The hearing shall not be had
12 until the judgment of conviction has become final or,
13 irrespective of a subsequent order under Section 1203.4 of
14 the Penal Code, an order granting probation has been made
15 suspending the imposition of sentence; except that a
16 licensee may, at his or her option, elect to have the issue
17 of penalty decided before those time periods have elapsed.
18 Where the licensee so elects, the issue of penalty shall be
19 heard in the manner described in this section at the hearing
20 to determine whether the conviction was substantially
21 related to the qualifications, functions, or duties of a
22 physician and surgeon. If the conviction of a licensee who
23 has made this election is overturned on appeal, any
24 discipline ordered pursuant to this section shall
25 automatically cease. Nothing in this subdivision shall
26 prohibit the division from pursuing disciplinary action
27 based on any cause other than the overturned conviction.

1 "(d) The record of the proceedings resulting in the
2 conviction, including a transcript of the testimony therein,
3 may be received in evidence.

4 "(e) The other provisions of this article setting
5 forth a procedure for the suspension or revocation of a
6 physician and surgeon's certificate shall not apply to
7 proceedings conducted pursuant to this section...."

8
9 **CONVICTION OF ATTEMPTED MURDER**

10 5. On or about June 24, 1997, after a jury trial in a
11 matter entitled *The People of the State of California v. Rurico*
12 *Robert Espinoza*, Case No. KA 033583, before the Superior Court of
13 California, County of Los Angeles, respondent was convicted of
14 one count of Attempted Murder (a felony), in violation of Penal
15 Code sections 664, 187(a). On or about August 26, 1997,
16 respondent was sentenced to state prison for 11 years, with
17 credit of 132 days for time spent in custody.

18 9. The facts and circumstances surrounding
19 respondent's conviction are as follows. On or about September
20 20, 1996, respondent told his (estranged) wife that he was going
21 to kill her, and then shot her in the hip with a handgun. The
22 handgun used by respondent was one with an obliterated serial
23 number. After shooting his wife, respondent hid the handgun,
24 attempted to remove evidence of blood and gun powder residue from
25 himself, and denied to police that he had shot her.

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1 Causes for License Discipline

2 10. Pursuant to B&PC section 2236.1(c), respondent's
3 conviction of violating Penal Code sections 664, 187(a) is
4 conclusively presumed to be substantially related to the
5 qualifications, functions, or duties of a physician and surgeon.

6 11. Respondent's conviction of attempted murder, a
7 crime substantially related to the qualifications, functions, and
8 duties of a physician and surgeon, constitutes unprofessional
9 conduct under B&PC section 2236. Such unprofessional conduct
10 constitutes grounds for license discipline under B&PC sections
11 2234, 2220.

12 12. Respondent's conviction of attempted murder, a
13 crime substantially related to the qualifications, functions, and
14 duties of a physician and surgeon, constitutes independent
15 grounds for license discipline under B&PC section 490.

16 13. Respondent's obtaining of an illegal handgun and
17 attempts to hide his guilt are dishonest and corrupt acts, which,
18 jointly and severally, are unprofessional conduct under B&PC
19 section 2234(e). Such unprofessional conduct constitutes grounds
20 for license discipline under B&PC sections 2234, 2220.

21
22 CURRENT INCARCERATION

23 14. Pursuant to B&PC section 2236.1, the Division has,
24 immediately upon receipt of the certified copy of the record of
25 conviction, determined that respondent's physician's and
26 surgeon's certificate has been automatically suspended by virtue
27 of his incarceration, and that the duration of the suspension is

1 indefinite pending further action of the Division. The Division
2 has notified respondent of the license suspension and of his
3 right to elect to have the issue of penalty heard as provided in
4 section 2236.1.

5 15. The Division has determined that inasmuch as
6 respondent has been convicted of Penal Code section 187, his
7 crime is substantially related to the qualifications, functions,
8 or duties of a physician and surgeon.

9 16. The issue of penalty has not been heard, nor need
10 it be heard at this time, pursuant to B&PC section 2236.1 (c)(2).
11

12 OTHER MATTERS

13 17. B&PC § 125.3 provides in pertinent part that:

14 "(a) Except as provided by law, in any order is-
15 sued in resolution of a disciplinary proceeding before any
16 board within the department ... the board may request the
17 administrative law judge to direct a licensee found to
18 have committed a violation or violations of the licensing
19 act to pay a sum not to exceed the reasonable costs of the
20 investigation and enforcement of the case. ...

21 "(c) A certified copy of the actual costs, or a
22 good faith estimate of costs where actual costs are not
23 available, signed by the entity bringing the proceeding or
24 its designated representative shall be prima facie evidence
25 of reasonable costs of investigation and prosecution of the
26 case. The costs shall include the amount of investigative
27 and enforcement costs up to the date of the hearing, inclu-

1 ding, but not limited to, charges imposed by the Attorney
2 General.

3 "(d) The administrative law judge shall make a
4 proposed finding of the amount of reasonable costs of inves-
5 tigation and prosecution of the case when requested pursuant
6 to subdivision (a). The finding of the administrative law
7 judge with regard to costs shall not be reviewable by the
8 board to increase the cost award. The board may reduce or
9 eliminate the cost award, or remand to the administrative
10 law judge where the proposed decision fails to make a
11 finding on costs requested pursuant to subdivision (a)...."

12 18. Section 16.01 of the 1997/1998 Budget Act of the
13 State of California provides, in pertinent part, that:

14 "(a) No funds appropriated by this act may be expended
15 to pay any Medi-Cal claim for any service performed by a
16 physician while that physician's license is under suspension
17 or revocation due to disciplinary action of the Medical
18 Board of California.

19 "(b) No funds appropriated by this act may be expended
20 to pay any Medi-Cal claim for any surgical services or other
21 invasive procedure performed on any Medi-Cal beneficiary by
22 a physician if that physician has been placed on probation
23 due to a disciplinary action of the Medical Board of
24 California related to the performance of that specific
25 service or procedure on any patient, except in any case
26 where the board makes a determination during its
27 disciplinary process that there exist compelling

circumstances that warrant continued Medi-Cal reimbursement during the probationary period."

P R A Y E R

19. For the reasons set forth in paragraphs 1 through 18, inclusive, of this accusation, good cause exists to impose discipline upon the Physician's and Surgeon's Certificate issued to respondent.

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. A-24047, heretofore issued to respondent Rurico Robert Espinoza, M.D.;

2. Revoking, suspending or denying approval of the respondent's authority to supervise physician's assistants, pursuant to Business and Professions Code section 3527;

3. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case;

4. If placed on probation, ordering respondent to pay the costs of probation monitoring;

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1 5. Taking such other and further action as the
2 Division deems necessary and proper.

3 DATED: November 20, 1997 .

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7 Ron Joseph
8 Executive Director
9 Medical Board of California
10 Department of Consumer Affairs
11 State of California

12 Complainant

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